

532-X-1-.02 Definitions.

(1) In addition to those definitions contained in Code of Ala. 1975, §34-43-4, the following definitions apply in connection with these rules.

(a) "Act" refers to 1996 Ala. Act No. 96-661.

(b) "Course" is any outline or play of study, or portion of a plan or program of instruction involving the imparting of knowledge, skills, or attitudes for the purpose of preparing the individual for gainful employment in an occupation nor vocation, or continuing the individual's education in said occupation or vocation, whether conducted in person, by mail, or by any other method.

(c) "Curriculum" is a group of organized programs.

(d) "Deny" is to refuse the issuance of a license upon initial application review or upon license renewal review.

(e) "Establishment" is a site, premises, business or operation where massage therapy is practiced by a licensed massage therapist. Any massage therapy business which engages in or carries on, as the whole or part of its services, the practice of massage therapy not at a fixed location but at a location designated by the customer, client, or service, is an on-site or out-call massage therapy establishment.

(f) "Examination" as approved by the Board and is offered by a national organization. is to be one authorized by the National Committee for Certifying Agencies (NCCA), the accrediting arm of the National Organization for Competency Assurance (NOCA), for the written examination, plus a practical examination or oral interview.

(g) "Massage Therapist" is a person licensed under this Act who practices massage therapy or touch modalities upon a patron of either gender for compensation, working to alleviate pain, reduced stress, and instigate the normalization of the soft tissue, muscles, tendons, ligaments, and connective tissue of the patron. A massage

therapist shall not be designated as a "massage parlor" employee.

(h) "Massage Therapy" is the profession in which the practitioner applies massage techniques and related touch therapy modalities with the intention of positively affecting the health and well being of the client as defined in the Act. Massage Therapy does not include diagnosis except to the extent of determining whether massage therapy is indicated. Massage Therapy may be applied in response to physician, osteopathic, chiropractic, podiatric, or other prescription by a licensed practitioner in that field acting within the scope of his or her profession.

(i) "Native American Healer" is a person who can establish by information, contained on his or her birth certificate, by tribal records or by other reliable records, that he or she is an American Indian or Alaskan Native, having origins in any of the original peoples of North America, as definite in Code of Ala. 1975, Section 25-1-10, and who practices traditional healing techniques.

(j) "School" is any institution, agency, business, or organization offering or administering a plan, course, or curriculum for the purpose of preparing individuals for gainful employment in an occupation, vocation, or continuing education of individuals in their occupation or vocation, whether conducted in person, by mail, or by any other method.

(k) "Supervised Massage" is the viewing or monitoring of a student demonstrating hands-on massage therapy by a licensed massage therapy instructor of Alabama licensed massage therapist.

(l) "Student of Massage Therapy" is any person currently enrolled in an Alabama massage therapy school program approved by the Board.

Author: Keith E. Warren

Statutory Authority: Code of Ala. 1975, §34-43-6.

History: New Rule: Filed January 29, 2001; effective March 5, 2001. **Amended:** Filed November 9, 2006; effective December 14, 2006.

532-X-2-.01 Board Composition And Officers.

(1) The Board shall consist of seven members, of whom five will be licensed massage therapists and two will be public members. The Board members shall serve no more than two consecutive full terms of four years each. The Board will elect a chairperson and vice chairperson from the members of the Board annually at the October regular session meeting.

(2) Qualifications of the Board members are as set forth in the act.

(3) The chairperson shall conduct the biannual and additional Board meetings, and ascertain the presence of a quorum of a majority of the current appointed board members ~~at least four Board members~~ prior to conducting the business of the Board. The chairperson shall call meetings in addition to the biannual meetings when in his or her discretion he or she deems it proper, or upon written request of any three members of the Board.

(4) The vice-chairperson shall assume the duties of the chairperson when the chairperson is unable to carry them out. In the event of a vacancy in the position of chairperson during the year for which that position was filled at the October meeting, the vice-chairperson shall act as a chairperson of the Board for the remainder of that year.

(5) Where the positions of chairperson and vice chairperson both become vacant during the year for which these positions were filled at the October meeting, leaving a quorum of the Board remaining, the remaining Board members shall elect by majority vote an interim chairperson for the remainder of that year.

Author: Keith E. Warren

Statutory Authority: Code of Ala. 1975, §34-43-6.

History: New Rule: Filed January 29, 2001; effective March 5, 2001. **Amended:** Filed November 9, 2006; effective December 14, 2006.

532-X-2-.02 Board Duties.

(1) The Board ~~as a whole, or in committees of no less than four members designated by the chairperson,~~ shall consider and act upon ~~the request for temporary permits;~~ proposals by continuing education providers; review of the rules and regulations; proposed budget; applications for employment; public information requests or offerings.

(2) The Board as a whole shall hold hearings on written allegations of misconduct or violation of the Act; and sit to consider applications for licensure and approval. An affirmative vote of a majority of the Board members is required to either accept or deny an application for licensure as a massage therapist

(3) The Board shall cause a complete record of all licensed massage therapists in the State of Alabama to be maintained in its office. A roster of massage therapists licensed by the Board shall be compiled annually, containing the names and address of the licensees. The annual roster shall be made available to person requesting a copy, upon payment of a reasonable fee set by the Board after assessment of the costs of publication, distribution and handling costs. Payment of the fee must be tendered at the time of the request, and shall be by money order, certified check, or cashier's check.

(4) The Board shall supply a copy of the statutes governing the practice of massage therapy in Alabama which are in force at the time to each applicant for licensure and to each person licensed under said statutes and these rules and regulations.

Author: Keith E. Warren

Statutory Authority: Code of Ala. 1975, §34-43-7.

History: New Rule: Filed January 29, 2001; effective March 5, 2001.

Massage Therapist Licensure Qualifications.

(1) Licensure applicants must be eighteen years of age or older on the date the applications for licensure is submitted to the Board.

(2) The applicant must not have knowingly performed massage therapy, whether for compensation or not, at or for a sexually oriented business, and must not have been convicted of or entered a plea of nolo contendere to a crime involving prostitution or other sexual offense within a three year period before submitting the application for licensure.

(3) The applicant must complete an application on the forms approved by the Board, and shall pay for all ~~licensing or examination~~ fees as set forth below, in a timely manner.

(4) The applicant shall cause the approved school which the applicant attended to provide an official original transcript of the applicant's satisfactory completion of the required course of instruction or curriculum, where the applicant is relying on the education requirement satisfaction for application to take the examination for licensure. If ~~official~~ original transcripts are not available due to unusual circumstances, the school should so certify to the Board, and the Board may approve submission of alternate documents that substantiate the applicant's satisfaction of the education requirements.

(5) An applicant who is licensed or registered to practice massage therapy in another ~~statements~~ or sovereign state and wishes to obtain licensure in Alabama must meet the minimum requirements set forth by the Board for licensure. ~~based on the current out-of-state licensure must submit to the Board the following:~~

~~(a) A "Verification of Licensure" form from the licensing board of the state or sovereign state in which the applicant is licensed, sent directly to the Board from the licensing state. The verification should state that there are no outstanding or unresolved complaints against the applicant known to the licensing board of the state of licensure.~~

~~———— (b) ——— A transcript from the school the applicant attended sent directly to the Board from the massage therapy school.~~

~~———— (c) ——— If the applicant did not attend a school but was licensed in the other state by showing a term of practice of massage therapy prior to that state's licensing act's enactment, the applicant may submit a copy of the documentation submitted to the other state's licensing board corresponding to the documentation required in 532 X 3 .01(6) above.~~

~~———— (d) ——— A copy of his or her current, valid license in another state or sovereign state as a massage therapist.~~

~~———— (e) ——— A copy of the licensing states massages therapy licensure statutes.~~

(6) Each first-time applicant for licensure must both complete the education requirements and take a board approved examination ~~the written and practical or oral examination.~~

(7) The education requirements for eligibility to apply for licensure are as follows:

~~(a) ——— prior to January 1, 1998, 500 hours of a supervised course of instruction;~~

~~———— (i) ——— 325 hours of basic massage therapy and clinical practice related modalities;~~

~~———— (ii) ——— 125 hours of anatomy, pathology and physiology;~~

~~———— (iii) ——— 50 hours of discretionary related course work, including but not limited to hydrotherapy, business practices and professional ethics, health and hygiene, cardiopulmonary resuscitation and first aid.~~

(b) ~~after December 31, 1997, The Board requires~~ 650 hours of a supervised course of instruction:

(i) 100 hours of anatomy, and physiology consisting of 35 hours of myology, 15 hours of osteology, 10 hours of circulatory system, 10 hours of nervous system,

~~40 hours of pathology~~ and 30 hours of other body systems at the discretion of the school;

(ii) 40 hours of pathology;

(iii) 250 hours of basic massage therapy, contraindications of massage therapy, contraindications to massage therapy, and related touch modalities, to include a minimum of 50 hours of supervised massage;

(iiiiv) 50 hours of miscellaneous required courses including business, hydrotherapy, first aid, cardiopulmonary resuscitation, and professional ethics;

(iv) 210 hours of electives to be determined by the school.

(8) To permit animal massage by a massage therapist under the direction of prescription of a licensed veterinarian, the applicant must graduate from a nationally approved program and complete a minimum of 100 hours of postgraduate training and education in animal anatomy, pathology, and physiology for the type of animal on which the therapist will perform therapeutic massage.

Author: Keith E. Warren

Statutory Authority: Code of Ala. 1975, §34-43-9.

History: New Rule: Filed January 29, 2001; effective March 5, 2001. **Amended:** Filed November 9, 2006; effective December 14, 2006.

Application And License.

(1) The Board shall adopt and make available an application form. On the return of the form the Board by the applicant, the form shall remain the property of the Board. No application received by facsimile will be accepted.

(2) Two color photographs of the applicant must accompany the application, two by two inches in size, taken within the previous six months, showing a frontal view of the applicant's head and shoulders.

(3) All applications must be submitted in English, type or printed in black ink.

(4) In the event that a school submits an official transcript or approved documents in lieu of official transcripts that are not in the English language, the documents must be translated into English by the school by means of a translator who appends a sworn affidavit certifying that the translation is a true, correct and complete translation of the original document, and that the translator is competent in both English and the language of the document. Where an applicant causes the school to submit an official transcript which is not in English or translated into English as set forth above, and the Board notifies the applicant of the lack of translation, the applicant may request the Board to allow him or her to provide a certified and sworn translation at his or her own expense.

(5) A massage therapist licensed in the State of Alabama shall carry professional and general liability insurance with an "A" rated or better insurance carrier in the amount of at least one million dollars (\$1,000,000), and shall give evidence of coverage or application for this coverage with the application for licensure or renewal of license, or at any other time the Board may request.

(6) After consideration of the application and supporting documents, the Board shall issue a license to each person qualified as a massage therapist, a license to each qualified massage establishment, or a license to each person qualified as a massage therapy instructor. To be qualified for licensure as a massage therapist, an applicant shall have successfully completed the educational

requirements and passed the examinations provided for in these rules, or shall have met the alternative requirements found in Section 34-43-9(2), (3), or (4), Code of Ala. 1975, and shall have given evidence of insurance coverage or application for coverage as stated above. Such massage therapy license grants all professional rights, honors and privileges relating to the practice of massage therapy.

(7) Each licensed massage therapist and massage therapy instructor shall publicly display his or her license. Each licensed massage therapy establishment shall post in plain and public view its license, and cause the licenses of each massage therapist who practices in the establishment to be publicly displayed, either as a group or individually.

(8) A license issued by the Board to a massage therapist, a massage therapy instructor, or massage therapy establishment remains the property of the Board and shall be surrendered upon demand of the Board.

(9) A change of name of the individual massage therapist or massage therapy instructor, or the name or ownership of a massage therapy establishment must be reported to the Board within 30 days ~~of the occurrence~~. A ten dollar (\$10) fee shall be charged for a license to be issued in the new name, and this fee should be submitted with the notice of name change, by money order, or by cashiers or certified check.

(10) The Board registers massage therapy schools, however, such registration shall not be construed as a license to practice massage therapy in regard to any instructor or student at the registered school. Each instructor must be individually licensed.

Author: Keith E. Warren

Statutory Authority: Code of Ala. 1975, §34-43-9.

History: New Rule: Filed January 29, 2001; effective March 5, 2001.

532-X-3-.04 Establishment Licensure.

(1) Each massage therapy establishment and on-site or out-call establishment as defined in these rules and regulations shall obtain a license to operate from the Board.

(2) The applicant for licensure of the establishment shall be the owner, lessee, or legal possessor of the establishment.

(3) In the event the licensed establishment sold, subleased, or legal possession of the establishment is changed, the new owner, lessee, or legal possessor of the establishment shall be required to apply for and obtain a new license within sixty (60) days of the change of ownership, lessee, or legal possess. The establishment license is not assignable or transferable.

(4) An establishment or business whose primary function is not the provision of massage therapy services may be exempt from the requirement of obtaining licensure as a massage therapy establishment by filing with the Board a sworn and notarized statement by the owner, lessee, or legal possessor declaring the primary function of the establishment; and by filing with the Board official government related or business records, city business license, Internal Revenue Service tax returns and records or correspondence regarding advertisement, appointment books kept in the normal course of business, or statements of business associates consulted in relation to the practice of the primary function of the establishment to be other than massage therapy, and as to which massage therapy is an incidental practice. The Board may request such other and further documentation of the interaction of massage therapy practice and the primary function of the establishment as seems reasonable in making its determination as to the granting of exemption from establishment licensure.

(5) ~~The applicant may be requested to submit to the Board evidence of or written policy covering the following~~ Each massage therapy establishment shall be subject to an inspection by the Board at any time during normal business hours and must demonstrate:

(a) current liability insurance coverage for bodily injury and property damage for the establishment;

(b) compliance with state and local fire and safety requirements;

(c) a fire extinguisher in good working condition;

(d) provision for extermination of vermin, insects, termites, and rodents;

(e) laundering or sanitation of all equipment and linens or other materials furnished for use of the customer or client, prior to reuse, if applicable;

(f) maintenance of equipment in a safe and sanitary condition;

(g) adequate toilet and lavatory facilities with running water, equipped with toilet tissue, soap dispenser with soap or other hand cleansing materials, sanitary towels or hand-drying devices, waste receptacle, with adequate lighting and ventilation sufficient to remove objectionable odors;

(h) adequate and sanitary shower facilities if the establishment maintains a whirlpool bath, sauna, hot tub, spa, steam cabinet or steam room; the shower, if any, is to be equipped with soap, sanitary cloth towels, and adequate lighting and ventilation;

(i) clean drape material for draping clients during the massage, use of which shall be explained to the client prior to the massage, and which shall cover the buttocks and genitals of a male client at all times during the massage, and which shall cover the buttocks, breasts, and genitals of a female client at all times during the massage.

(6) Upon receipt of an application for a massage therapy establishment license, the Board may cause an initial inspection to be made of the site to confirm that the establishment meets the above requirements and is to be utilized for massage therapy and not for the purposes unlawful under the massage therapy statutes.

(7) Inspections may be initiated by the Board at any time during reasonable business hours after licensure of the establishment, which may include but are not limited to determining whether the establishment is in compliance with the rules governing the establishment's operation, facilities, personnel, safety, sanitary requirements, and review of existing insurance coverage. Failure to cooperate with such inspection may lead to disciplinary action.

(8) No massage therapy establishment owner, lessee, or legal possessor shall knowingly engage in or permit any person or persons to engage in sexual activity in that owner's massage establishment or to use that establishment to make arrangements to engage in sexual activity in any other place.

Author: Keith E. Warren

Statutory Authority: Code of Ala. 1975, §§~~34-43-8,~~
~~34-43-11~~ 34-43-7.

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**532-X-3-.05 Massage Therapy School, Massage Therapy
Instructor Requirements.**

(1) The Board shall establish a list of approved massage therapy schools, and graduation from the massage therapy curriculum of an approved massage therapy school shall satisfy the education requirements of an applicant for licensure.

(2) A massage therapy school located outside of the State of Alabama which is recognized by a regional professional accrediting body, or which is an accredited postgraduate training institute may be recognized by the Board as an approved massage therapy school. A copy of the massage therapy curriculum at such school must be submitted with the transcript of a student graduating from the school to qualify a student of the school for satisfaction of the education requirements of an applicant for Alabama licensure.

(3) A massage therapy school located outside of the State of Alabama may seek to be approved and registered by the Board in the same manner as a massage therapy school located in the State of Alabama.

(4) A massage therapy school located in the State of Alabama must meet the requirements for approval, and file a completed application for approval of the Board, with the registration fee, to qualify its students to satisfy the education requirements for licensure. The massage therapy school must apply directly to the Board of Massage Therapy for approval, and submit the following information:

- (a) sample transcript and diploma;
- (b) copy of curriculum, catalog, or other course description;
- (c) faculty credentials;

(5) A massage therapy school approved by the Board must register annually with the Board, submitting a renewal form, the renewal fee, a current curriculum, and a list of instructors of massage therapy who teach or supervise at the school. Should a change in ownership, curriculum, faculty or staff, or address of the school

occur during the year subsequent to obtaining approval of the Board, the school must notify the Board of such change within 30 days of the school's authorization of the proposed change or of implementation of the change, whichever is sooner.

(6) The Board must consider continued approval of a massage therapy school after a change of ownership, curriculum, or faculty, or staff.

(7) In the event a massage therapy school submits an annual renewal form with current curriculum which does not meet the minimum standards set forth in the Alabama massage therapy statutes and approved by the Board applicable at that time, the Board shall send a deficiency notice to the school and suspend the approval of the school. The school shall have six months in which to correct the deficiency and submit a renewal form with fee and copy of the conforming curriculum. Approval of a massage therapy school may be withdrawn by the Board if the massage therapy school modifies its curriculum without notice to the Board, or falls below the minimum standards required by the statutes and these rules and regulations; or if the school violates any standard applicable to the accreditation of the school by the Board of education; or violates any applicable rule or regulation of the Board of Massage Therapy.

(8) An instructor of massage therapy course work teaching at a Board approved school located in Alabama must be licensed in Alabama as a massage therapy instructor unless the course is a continuing education course being taught by a visiting instructor who does not teach more than 100 hours of continuing education per year.

(9) To qualify for registration as a massage therapy instructor, an applicant must:

(a) be currently licensed as an Alabama massage therapist and maintain a current license;

(b) submit the application form and one-time fee;

(c) document two years of experience in the practice of massage therapy, which documentation may include:

1. City business licenses showing the occupation as a massage therapist;
 2. Internal Revenue Service tax returns listing the occupation as massage therapist;
 3. Records or correspondence regarding advertisement as a massage therapist;
 4. Affiliations with professional organizations;
 5. Appointment books kept in the ordinary course of business;
 6. Statements from personal knowledge by persons not related to the applicant, which may include: notarized statements of clients; statements of licensed professional associates consulted in relation to the practice of massage therapy; statements of business associates consulted in relation to the practice of massage therapy, such as bankers, brokers, attorneys.
- (10) Guidelines for Supervised Student Clinicals
- (a) 50 hour minimum
 - (b) 100 hour maximum
 - (c) Performed on the school premise
 - (d) Performed under the direct supervision of licensed massage therapist employed by the school.
 - (e) During the clinical session, the licensed massage therapist must have direct access to the student/client.
 - (f) The client must have full knowledge that the massage therapy session is being performed by a student therapist prior to beginning the session.
 - (g) The student therapist shall receive no compensation for any massage therapy session.

(h) Student may receive clinical hour credit for performing business related tasks such as answering telephones, returning telephone calls, booking therapy appointments, computer or file data entry, laundry of linens if the school provides linens for student clinical use and any other business related tasks which will aide the students in future massage work environments.

(i) Student clinicals may not include manual labor on the school premise unrelated to every day clinical sessions.

(j) Students may not be required to clean the school premise beyond the normal sanitation procedures inclusive to treatment rooms and the immediate office space (i.e. appointment desk area, copy station and client waiting room) used during clinical sessions.

(k) Students may not be required to perform building maintenance, lawn care, facility housekeeping including bathrooms, floors or anything that does not apply to the education and career goal of a student.

Author: Keith E. Warren

Statutory Authority: Code of Ala. 1975, §34-43-1.

History: New Rule: Filed January 29, 2001; effective March 5, 2001. **Amended:** Filed November 1, 2005; effective December 6, 2005. **Amended:** Filed November 9, 2006; effective December 14, 2006.

532-X-3-.06 Fee Schedule.

(1) Fees for applications, licensure, and services by the Board shall be as stated in Section 34-43-14, Code of Ala. 1975, as may be further amended by statute, and in addition administrative fees may be charged as follows:

- (a) Massage Therapist License and Renewal Fee
\$100.00
- (b) Application Request Fee \$25.00
- (c) Initial Establishment License Fee \$100.00
- (d) Establishment Renewal Fee \$50.00
- (e) Initial Massage Therapy School Registration
Fee \$50.00
- (f) Massage Therapy School Renewal Fee \$10.00
- (g) Massage Therapy Instructor License Fee
\$10.00
- (h) License Reactivation Fee \$75.00 if license
is expired for more than 1 year and all applicable renewal
fees
- (i) Late License Fee \$25.00 if received after
the expiration date
- (j) License Verification Fee \$15.00
- (k) Duplicate License Fee \$10.00
- (al) copy of roster of Alabama license massage
therapists: thirty dollars (\$30),
- (bm) copy of roster of approved massage therapy
schools: five dollars (\$5),
- (en) copy fee per page: twenty-five cents (\$.25),
- (do) postage and handling: actual postage plus
one dollar fifty cents (\$1.50) per item handling.

(2) All fees are nonrefundable.

(3) All fees must be submitted in the form of a cashier's or certified check, or money order. No personal checks or cash will be accepted.

(4) Fees must be received at the Office of the Alabama Board of Massage Therapy on or before the proper due date, and in the proper form of payment for applications or renewals to be considered timely filed.

(5) A late fee of twenty-five dollars (\$25.00) shall be assessed for all license renewal fees not post-marked by the Board before the expiration date of the license.

Author: Keith E. Warren

Statutory Authority: Code of Ala. 1975, §34-43-14.

History: New Rule: Filed January 29, 2001; effective March 5, 2001.

532-X-5-.01 Complaints License Suspension, Revocation Or Failure To Renew.

(1) ~~Where the Board is made aware by written allegation of the possibility of impropriety by a licensee in obtaining or maintaining licensure, or failing to obtain or timely renew licensure, or in the practice of massage therapy, or the maintenance of a massage therapy establishment, or other allegedly improper circumstance regarding massage therapy, the Board will give notice and opportunity to be heard to the licensee, registrant, establishment, or person alleged to have committed the impropriety or delinquency, pursuant to the Alabama Administrative Procedure Act. For a minor incorrect practice of massage therapy or deficiency, the licensee, registrant, establishment, or person may be given notice of the incorrect practice or deficiency and an opportunity to cure the incorrect practice or deficiency, the licensee, registrant, establishment, person may request a formal or informal hearing before the Board on an impropriety, delinquency, incorrect practice, or deficiency, without regard to whether the Board has been given notice previously of the impropriety, delinquency, incorrect practice, or deficiency may decline a hearing afforded the licensee or person by the Board. The right to decline a hearing afforded by the Board is a personal right which is to be exercised by the licensee or person and not by his attorney or other representative acting alone, and must be exercised in writing. The party requesting a hearing is responsible for obtaining the services of and payment of the cost of the court reporter's fee, if any. Any person may file a written and signed complaint regarding an allegation of impropriety by a licensee, establishment or person. Complaints should be referred to a standing investigative committee consisting of a Board member, the Executive Director, the Board attorney, and the Board investigator. After consideration by the investigative committee, the Board may give notice of an administrative hearing pursuant to the Alabama Administrative Hearing Act and to Sections 34-43-11 and 34-43-15 of the Code of Alabama. If no probable cause is found, the investigative committee may dismiss the charges and prepare a statement, in writing, of the reasons for the decision. The statement shall be mailed to the accused party and the complaining party by registered or certified mail.~~

(2) ~~The improprieties and delinquencies set forth in the Massage Therapy statutes are examples of improprieties and delinquencies for which the Board may suspend, fine, revoke or refuse to grant or renew a license, but are not at all inclusive or exhaustive list of such improprieties and delinquencies.~~ For a minor violation of this chapter, the licensee, establishment or person may be given notice and an opportunity to cure the violation. The Board may enter into an informal disposition of any case by an agreed settlement or consent order.

(3) ~~The Board will notify the licensee (or other person afforded a hearing after written allegation) of the decision of the Board, listing the reasons for any decision adverse to the licensee or person afforded a hearing. A licensee, establishment, or person may request an informal or formal hearing before the Board, or may decline a hearing afforded to the licensee, establishment or person. The right to decline a hearing afforded by the Board is a personal right which is to be exercised by the licensee or person and not by his attorney or other representative acting alone, and must be exercised in writing. The party requesting a hearing is responsible for obtaining the services of and payment of the cost of the court reporter's fee, if any.~~

(4) ~~If, in the opinion of the Board the misconduct is a continuing civic wrong which is not amendable to action of the Board after a hearing, or harm is imminently likely to occur to the public from continuation of the misconduct is criminal, the Board may institute a civil action for an injunction with penalties and costs, and/or may present the misconduct and information to the District Attorney for the county in which the misconduct occurred for prosecution as a criminal case.~~ The violations set forth in Sections 34-43-1, et seq. are examples of improprieties and delinquencies but not an exhaustive list, for which the Board may suspend, fine, revoke or refuse to grant or renew a license.

(5) The Board will conduct disciplinary proceedings pursuant to the Alabama Administrative Procedures Act.

(6) The Board may institute a civil action for an injunction with penalties and costs against any person alleged to be in violation of Sections 43-43-1, et seq.

The Board may present the misconduct to the local District Attorney for review and appropriate action.

Author: Keith E. Warren

Statutory Authority: Code of Ala. 1975, §§34-43-7, 34-43-15, 34-43-17, 34-43-18.

History: New Rule: Filed January 29, 2001; effective March 5, 2001.

532-X-5-.02 Advertising Limitations.

(1) A written advertisement by a massage therapist or a massage therapy establishment shall contain the license ~~or registration~~ number of the massage therapist or establishment.

(2) No person or establishment without valid massage therapy licensure shall advertise as a massage therapist or massage therapy establishment.

(3) An establishment whose primary function is not massage therapy and for which establishment massage therapy is incidental to the primary function, may apply to the Board for an exemption from licensure as a massage therapy establishment pursuant to the procedure state above.

(4) No sexually oriented business may use the terms "massage therapy," or "bodywork" in any way form of advertising.

Author: Keith E. Warren

Statutory Authority: Code of Ala. 1975, §34-43-16.

History: New Rule: Filed January 29, 2001; effective March 5, 2001. **Amended:** Filed November 9, 2006; effective December 14, 2006.

532-X-5-.03 Prohibited Acts.

(1) The following acts shall constitute misconduct in the practice of massage therapy for which disciplinary penalties may be imposed after opportunity to be heard pursuant to the procedure in the Alabama Administrative Procedures Act:

(a) conviction, adjudication, or a finding of guilt in any jurisdiction of a crime, which directly relates to the practice of massage therapy or to the ability to practice massage therapy. A plea of nolo contendere may be taken into consideration by the Board.

(b) false, deceptive or misleading advertising.

(c) aiding, assisting, procuring, or advertising any unlicensed person to practice massage therapy contrary to the rules and regulations of the Board or the Massage Therapy statutes.

(d) engaging in or attempting to or offering to engage a client in sexual activity, including but not limited to genital contact, within a client-massage therapist relationship.

(e) making deceptive, untrue, or fraudulent representations in the practice of massage therapy.

(f) practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.

(g) delegating professional responsibilities to a person when the licensee delegating the responsibility knows or has reason to know that the person is not qualified by training, experience, or licensure to perform those responsibilities. This shall not include acts of an enrolled student ~~with a temporary permit~~ being supervised by a licensed ~~massage therapist or~~ massage therapy instructor. ~~The acts of the supervised student acting under a temporary permit shall be treated as the acts of the supervising massage therapist or massage therapy instructor.~~

(h) acting, as a massage therapist or operating a massage therapy establishment while unlicensed or with a revoked or suspended license.

(i) teaching massage therapy as a massage therapy instructor while unlicensed, unless teaching continuing education as a visiting massage therapy instructor exempt under the statutes.

(j) refusing to allow the designated Board member(s) or investigator to inspect massage therapy premises or establishment during regular business hours.

(k) practicing massage therapy at a site which is not exempt or licensed as a massage therapy establishment, unless the massage therapy is done on-site or out-call at a location under the control of the client, or is done at an educational or trade site for demonstration purposes.

(l) failing to maintain professional and liability insurance in the practice of massage therapy, or failing to maintain liability insurance in the operation of a massage therapy establishment.

(m) failing to attend and/or provide evidence of attendance at 16 hours of approved continuing education course work in the twenty-four (24) months preceding the date renewal of licensure is due.

(2) The following acts shall constitute incorrect practice of massage therapy for which disciplinary penalties may be imposed after opportunity to be heard in an informal or a formal hearing pursuant to the procedure in the Alabama Administrative Procedures Act, or after notice of deficiency and opportunity to cure the deficiency:

failing to perform a statutory or legal or rule-based obligation based upon a licensee in the practice of massage therapy.

failing to practice massage therapy with reasonable skill and safety to clients as a result of illness; use of alcohol, drugs, narcotics, chemicals, or other mind-altering substance; mental or physical condition.

(a) failing to practice massage therapy with that level of care, skill and treatment which is recognized

by a reasonably prudent massage therapist as being acceptable under similar circumstances and conditions.

(b) failing to maintain premises, supplies, and equipment of the massage therapy establishment in a clean and sanitary condition.

(c) failing to include the licensee's license or registration number in an advertisement, for the first infraction. A second or subsequent infraction may be considered to be misconduct as false, misleading or deceptive advertising.

Author: Keith E. Warren

Statutory Authority: Code of Ala. 1975, §34-43-15.

History: New Rule: Filed January 29, 2001; effective March 5, 2001.

532-X-5-.03 Prohibited Acts.

(1) The following acts shall constitute misconduct in the practice of massage therapy for which disciplinary penalties may be imposed after opportunity to be heard pursuant to the procedure in the Alabama Administrative Procedures Act:

(a) conviction, adjudication, or a finding of guilt in any jurisdiction of a crime, which directly relates to the practice of massage therapy or to the ability to practice massage therapy. A plea of nolo contendere may be taken into consideration by the Board.

(b) false, deceptive or misleading advertising.

(c) aiding, assisting, procuring, or advertising any unlicensed person to practice massage therapy contrary to the rules and regulations of the Board or the Massage Therapy statutes.

(d) engaging in or attempting to or offering to engage a client in sexual activity, including but not limited to genital contact, within a client-massage therapist relationship.

(e) making deceptive, untrue, or fraudulent representations in the practice of massage therapy.

(f) practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.

(g) delegating professional responsibilities to a person when the licensee delegating the responsibility knows or has reason to know that the person is not qualified by training, experience, or licensure to perform those responsibilities. This shall not include acts of an enrolled student ~~with a temporary permit~~ being supervised by a licensed ~~massage therapist or~~ massage therapy instructor. ~~The acts of the supervised student acting under a temporary permit shall be treated as the acts of the supervising massage therapist or massage therapy instructor.~~

(h) acting, as a massage therapist or operating a massage therapy establishment while unlicensed or with a revoked or suspended license.

(i) teaching massage therapy as a massage therapy instructor while unlicensed, unless teaching continuing education as a visiting massage therapy instructor exempt under the statutes.

(j) refusing to allow the designated Board member(s) or investigator to inspect massage therapy premises or establishment during regular business hours.

(k) practicing massage therapy at a site which is not exempt or licensed as a massage therapy establishment, unless the massage therapy is done on-site or out-call at a location under the control of the client, or is done at an educational or trade site for demonstration purposes.

(l) failing to maintain professional and liability insurance in the practice of massage therapy, or failing to maintain liability insurance in the operation of a massage therapy establishment.

(m) failing to attend and/or provide evidence of attendance at 16 hours of approved continuing education course work in the twenty-four (24) months preceding the date renewal of licensure is due.

(2) The following acts shall constitute incorrect practice of massage therapy for which disciplinary penalties may be imposed after opportunity to be heard in an informal or a formal hearing pursuant to the procedure in the Alabama Administrative Procedures Act, or after notice of deficiency and opportunity to cure the deficiency:

failing to perform a statutory or legal or rule-based obligation based upon a licensee in the practice of massage therapy.

failing to practice massage therapy with reasonable skill and safety to clients as a result of illness; use of alcohol, drugs, narcotics, chemicals, or other mind-altering substance; mental or physical condition.

(a) failing to practice massage therapy with that level of care, skill and treatment which is recognized

by a reasonably prudent massage therapist as being acceptable under similar circumstances and conditions.

(b) failing to maintain premises, supplies, and equipment of the massage therapy establishment in a clean and sanitary condition.

(c) failing to include the licensee's license or registration number in an advertisement, for the first infraction. A second or subsequent infraction may be considered to be misconduct as false, misleading or deceptive advertising.

Author: Keith E. Warren

Statutory Authority: Code of Ala. 1975, §34-43-15.

History: New Rule: Filed January 29, 2001; effective March 5, 2001.

~~532-X-5-.04~~ Discipline And Injunctions.

~~(1) The Board may receive written complaints regarding licensees, registrants, applicants, entities, or other persons regarding massage therapy or violations of the massage therapy statutes.~~

~~(2) The Board will designate an investigator who is not a Board member to gather information regarding the complaint and present the information to the Board for its consideration.~~

~~(3) Notice and opportunity to be heard will be afforded the licensee, registrant, establishment, entity, or person alleged to be delinquent or to have committed an impropriety, as stated above. If, after such a hearing, the Board determines adversely to the licensee, registrant, establishment, entity, or person, the Board may:~~

~~(a) order the licensee, registrant, establishment, entity, or person to correct the delinquency within a stated amount of time;~~

~~(b) order the licensee, registrant, establishment, entity, or person to cease and desist the improper acts;~~

~~(c) revoke the license or registration of the licensee, registrant, establishment, entity, or person;~~

~~(d) refuse to issue a license, registration, or renewal to the applying licensee, registrant, establishment, entity, or person;~~

~~(e) suspend the license or registration of the licensee, registrant, establishment, entity, or person pending correction of a delinquency or impropriety;~~

~~(f) institute a civil action for an injunction with penalties and costs;~~

~~(g) present the information and allegation of misconduct to the District Attorney for the county in which the misconduct occurred, for criminal prosecution of the case.~~

~~(4) The Board, after notice and/or hearing, may dispose of a case informally by stipulation, agreed settlement, or consent order in lieu of decision of the Board, with all~~

~~parties or their authorized representative signing a written stipulation, agreed settlement, or consent order document.~~

~~(5) Any one or more of the above penalties may be imposed or sought in a particular case, as the situation warrants; and the Board may impose or seek any other penalty or remedy not stated above but available and authorized by law.~~

Author: Keith E. Warren

Statutory Authority: Code of Ala. 1975, §34-43-15.

History: New Rule: Filed January 29, 2001; effective March 5, 2001.